IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

WP(C).No. 6227 of 2007(N)

OS.271/2001 of MUNSIFF COURT, ALATHUR

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PETITIONER:

ACHUTHAN NAIR, S/O. LATE CHINNA @ MADHAVIKUTTY AMMA, AGED 68 YEARS, KONDATHUVEEDU, CHERUGATTUKULAM, KAVASSERY AMSOM.

BY ADV. MRI.P.R. VENKATESH

RESPONDENTS:

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1. SUBHADRA AMMA, W/O. LATE PADMANABHAN NAIR, ARIYATHU VEEDU, MATHUR AMSOM, DESOM, ALATHUR TALUK.
2. GOPINATHAN, S/O. SUBHADRA AMMA, -DO- -DO-
3. SAROJINI AMMA, D/O. SUBHADRA AMMA, -DO- -DO-
4. MURALEEDHARAN, S/O. SUBHADRA AMMA, -DO- -DO-
5. RAJAN @ HARIDASAN, S/O. LATE CHINNA @ MADHAVI AMMA, -DO- -DO-
6. RADHA @ SANTHAKUMARY, D/O. LATE NAVUKUTTY AMMA, KONDATH VEEDU, VADAKKENADA, KAVUSSERY AMSOM, DESOM, ALATHUR TALUK.
7. RAJAN @ HARIDASAN, -DO- -DO-
8. VASUDEVAN, -DO- -DO-
9. RAMACHANDRAN, -DO- -DO-

10. NARAYANANKUTTY,
KONDATH VEEDU, THIRUARA, KIZHAKKENCHERRY AMSOM,
DESOM, ALATHUR TALUK.

11. SARASWATHY, W/O. LATE ACHUTHAN NAIR,
CHENNAKUMARATHU VEETTIL, -DO- -DO-

12. JAYALAKSHMI, W/O. BALAKRISHNAN NAIR,
POONKUNNAM, THRISSUR TALUK, THRISSUR DISTRICT.

13. K.RADHAKRISHNAN,
SOWPARNIKA, CHEMBUTHARA, PATTIKAD,
THRISSUR TALUK.

14. DR. K.VALSALA, W/O. GOPINATHAN NAIR,
ENDEEVANAM, AMBALAMUKKU, THIRUVANANTHAPURAM.

15. SAROJINI, W/O. CHANDRAN,
KANJHULLY HOUSE, KATTUKULAM, THIRUVILLWAMALA,
THALAPPILLY TALUK, THRISSUR DISTRICT.

16. DIVAKARAN,
PRADANI, VADAKKENCHERRY VILLAGE,
ALATHUR TALUK.

17. MURALEEDHARAN,
THIRUVARAKALAM, THIRUVARA, KIZHAKKENCHERRY.

18. BALACHANDRAN, S/O. LATE GOVINDAN NAIR,
GOKULAM, KOLANGOTTUKARA, CHOOLISSERI P.O.,
THRISSUR TALUK.

19. PADMAVATHY, W/O. ARAVINDAKSHAN,
KONDATHU VEETTIL, KIZHAKKENCHERRY AMSOM.

20. VIJAYAKUMARAN, S/O. LATE YESODHAMMA,
KAVASSERY AMSOM, KONDATHU VEETTIL,
NELLITHARAGRAMAM, ALATHUR TALUK.

21. KOMALAVALLY, W/O. LATE KUTTYRAMAN NAIR,
-DO- -DO-

22. SAROJINI, W/O. LATE BALAKRISHNAN NAIR,
CHERUMGOTTIL, KAVASSERY AMSOM.

23. RAVINDRAN, S/O. SAROJINI,
-DO- -DO-

24. SANTHAKUMARI, D/O. SAROJINI,
-DO- -DO-

25. GIRIJA, D/O. SAROJINI,
-DO- -DO-

26. SURENDRAN, S/O. SAROJINI,
-DO- -DO-

27. BABU @ NANDAKUMAR,
-DO- -DO-

28. MEENAKSHYKUTTY AMMA, D/O. CHINNA @
MADHAVI AMMA, W/O. LATE SETHUMADHAVAN NAIR,
KONDATH VEEDU, KAVUSSERY AMSOM, ALATHUR TALUK.

29. VINOD BABU, S/O. ARANGATTU RADHA AMMA,
KAVUSSERY AMSOM DESOM, ALATHUR TALUK.

BY ADV. SRI.MANURAJ. K.J
SRI.MANURAJ. K.J
SRI.MANURAJ. K.J
SRI.MANURAJ. K.J
SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE ORDER DT.29.11.2006 ON ISSUE NO: 5 IN O.S.271 OF 2001 ON THE FILES OF MUNSIFF COURT, ALATHUR

jj /TRUE COPY/

P.A. TO JUDGE

M.N.KRISHNAN, J.

WP(C)No.6227 OF 2007 N

Dated this the 28th June, 2007.

JUDGMENT

This writ petition is filed against the finding of the Munsiff, Alathur on issue No:5. That issue pertains to non-joinder of necessary parties. The plaintiff has instituted a suit for partition of one item of property and the 20th defendant entered appearance and filed a written statement and incorporating that certain other items of properties are also available for division. It was also contended that those properties are outstanding with others and therefore junction of those persons are also necessary for the proper disposal of the suit. Learned counsel for the writ petitioner submits that the said question need not be considered in this suit and therefore the direction of the court to implead additional defendants need not be there. The point raised by the 20th defendant is not regarding partial partition alone but by incorporating schedule of properties which he wants the court to adjudicate whether they are divisible or not. In a suit for partition the plaintiffs and defendants hold the same position and the defendants can also certainly request the court to partition an item of property if the plaintiff has omitted to do it. Whether the right of the 20th defendant

is lost by any law or by an ouster etc. are all matters which can be considered by the court only at the time of adjudication. So, when there is schedule of properties attached to the written statement with a prayer for division of that property as well the court is bound to consider the same because the court has to raise an issue on that point. Therefore, in order to adjudicate that issue it is necessary to have the parties interested to be impleaded. It is precisely done by the learned Munsiff in the impugned order. It does not suffer from any infirmity and therefore the writ petition is dismissed. But any how there is an apprehension by the writ petitioner that this is only to protract matters. Therefore, I direct the Munsiff, Alathur to bestow his attention and try to dispose of the matter as expeditiously as possible after affording sufficient opportunity to all concerned to put forward their contentions.

M.N.KRISHNAN
Judge

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